

AMENDED IN SENATE JULY 15, 2010

AMENDED IN SENATE JUNE 17, 2010

AMENDED IN ASSEMBLY APRIL 12, 2010

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 1954

Introduced by Assembly Members Skinner and V. Manuel Pérez

February 17, 2010

An act to amend Sections 399.2.5 and 399.12 of the Public Utilities Code, relating to electricity.

LEGISLATIVE COUNSEL'S DIGEST

AB 1954, as amended, Skinner. Electrical transmission: renewable energy resources.

Under existing law, the Public Utilities Commission (CPUC) has regulatory authority over public utilities, including electrical corporations, as defined. Existing law, the Public Utilities Act, prohibits any electrical corporation from beginning the construction of, among other things, a line, plant, or system, or of any extension thereof, without having first obtained from the CPUC a certificate that the present or future public convenience and necessity require or will require that construction (certificate of public convenience and necessity). Existing law requires the CPUC, in acting upon an application by an electrical corporation for a certificate of public convenience and necessity, to deem new transmission facilities necessary to the provision of electric service if the CPUC finds that new transmission facilities are necessary to facilitate achievement of the renewable power goals established under the renewables portfolio standard. That law additionally requires the CPUC, upon finding that new transmission facilities are necessary to

facilitate achievement of the renewable power goals established under the renewables portfolio standard, to take all feasible actions to ensure that the transmission rates established by the Federal Energy Regulatory Commission are fully reflected in any retail rates established by the commission.

This bill would provide that an application by an electrical corporation for a certificate of public convenience and necessity for new transmission facilities is necessary to the provision of electric service if the CPUC finds that *the new transmission facilities facilitate facility is necessary to facilitate* achievement of the renewables portfolio standard. The bill would authorize the CPUC to approve the recovery in retail rates by an electrical corporation of certain costs for transmission facilities that are incurred in certain circumstances if not approved for recovery in transmission rates by the Federal Energy Regulatory Commission.

This bill would revise and recast certain of the definitions applicable to the California Renewables Portfolio Standard Program, and would revise certain requirements applicable to the State Energy Resources Conservation and Development Commission for certifying when an eligible renewable energy resource may earn a renewable energy credit.

The provisions of the bill would only become operative if the bill and SB 722 of the 2009–10 Regular Session are both enacted and become effective on or before January 1, 2011.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 399.2.5 of the Public Utilities Code is
- 2 amended to read:
- 3 399.2.5. (a) Notwithstanding Sections 1001 to 1013, inclusive,
- 4 an application of an electrical corporation for a certificate
- 5 authorizing the construction of new transmission facilities is
- 6 necessary to the provision of electric service if the commission
- 7 finds that the new facility ~~facilitates~~ *is necessary to facilitate*
- 8 achievement of the renewables portfolio standard established in
- 9 Article 16 (commencing with Section 399.11).
- 10 (b) With respect to a transmission facility described in
- 11 subdivision (a), the commission shall take all feasible actions to
- 12 ensure that the transmission rates established by the Federal Energy

1 Regulatory Commission are fully reflected in any retail rates
2 established by the commission. These actions shall include all of
3 the following:

4 (1) Making findings, where supported by an evidentiary record,
5 that those transmission facilities provide benefit to the transmission
6 network and *are necessary to* facilitate the achievement of the
7 renewables portfolio standard established in Article 16
8 (commencing with Section 399.11).

9 (2) Directing the utility to which the generator will be
10 interconnected, where the direction is not preempted by federal
11 law, to seek the recovery through general transmission rates of the
12 costs associated with the transmission facilities.

13 (3) Asserting the positions described in paragraphs (1) and (2)
14 to the Federal Energy Regulatory Commission in appropriate
15 proceedings.

16 (4) Allowing recovery in retail rates of any increase in
17 transmission costs incurred by an electrical corporation resulting
18 from the construction of the transmission facilities that are not
19 approved for recovery in transmission rates by the Federal Energy
20 Regulatory Commission after the commission determines that the
21 costs were ~~reasonably and prudently incurred, subject to any rule~~
22 ~~adopted by the commission pursuant to subdivision (b) of Section~~
23 ~~454, concerning the showing to be made in support of proposed~~
24 ~~rate changes: prudently incurred.~~

25 (c) (1) The commission, prior to making a finding pursuant to
26 subdivision (a), may approve an advice letter from an electrical
27 corporation seeking, for a specific transmission project, a finding
28 of eligibility for cost recovery pursuant to paragraph (4) of
29 subdivision (b). ~~Ultimate recovery of construction costs shall be~~
30 ~~contingent upon the commission finding, pursuant to subdivision~~
31 ~~(a), that the facility facilitates achievement of the renewables~~
32 ~~portfolio standard established pursuant to Article 16 (commencing~~
33 ~~with Section 399.11), and upon a determination by the commission~~
34 ~~that the costs were reasonably and prudently incurred, subject to~~
35 ~~any rule adopted by the commission pursuant to subdivision (b)~~
36 ~~of Section 454, concerning the showing to be made in support of~~
37 ~~proposed rate changes.~~

38 (2) ~~(A) The commission may approve cost recovery, in retail~~
39 ~~rates, for preconstruction costs if requested in an application of an~~
40 ~~electrical corporation for a certificate authorizing the construction~~

1 of new transmission facilities if the commission finds that the new
2 facility facilitates achievement of the renewables portfolio standard
3 established in Article 16 (commencing with Section 399.11) and
4 that the costs were reasonably and prudently incurred, subject to
5 any rule adopted by the commission pursuant to subdivision (b)
6 of Section 454, concerning the showing to be made in support of
7 proposed rate changes.

8 (B) The commission may approve cost recovery, in retail rates,
9 for preconstruction costs if requested in an application or advice
10 letter of an electrical corporation that seeks approval for
11 preconstruction costs for a potential transmission facility if the
12 utility certifies, at the time of filing the application, that it expects
13 that the facility will facilitate achievement of the renewables
14 portfolio standard established in Article 16 (commencing with
15 Section 399.11). If the request for recovery of preconstruction
16 costs is made in an application that the commission finds contains
17 an adequate showing that the costs to be incurred are reasonable,
18 the commission may approve recovery in retail rates without a
19 subsequent reasonableness review. If the request for recovery of
20 preconstruction costs is made in an advice letter, retail rate recovery
21 is contingent upon a subsequent reasonableness review, unless
22 otherwise ordered by the commission.

23 (3) The commission's determination that transmission facilities
24 are eligible for cost recovery pursuant to paragraph (1) or (2) is
25 (b), if the electrical corporation certifies in the advice letter, in a
26 form prescribed by the commission, that it expects that the facility
27 will be necessary to facilitate achievement of the renewables
28 portfolio standard established pursuant to Article 16 (commencing
29 with Section 399.11). The electrical corporation's ultimate
30 recovery of construction costs shall be contingent upon the
31 commission finding, pursuant to subdivision (a), that the facility
32 is necessary to facilitate achievement of the renewables portfolio
33 standard and that the costs were prudently incurred.

34 (2) Prior to making a finding pursuant to subdivision (a), the
35 commission may approve an advice letter from an electrical
36 corporation requesting retail rate cost recovery for costs incurred
37 prior to permitting or certification for potential transmission
38 facilities if the electrical corporation certifies in the advice letter,
39 in a form prescribed by the commission, that it expects that the
40 facility will be necessary to facilitate achievement of the

1 *renewables portfolio standard established pursuant to Article 16*
2 *(commencing with Section 399.11). The electrical corporation's*
3 *ultimate recovery of costs incurred prior to permitting or*
4 *certification shall be contingent upon the commission finding that*
5 *the electrical corporation administered the approved costs*
6 *reasonably and prudently.*

7 (3) Any commission determination pursuant to this subdivision
8 is not binding upon the commission when determining the need
9 for the transmission facilities pursuant to Chapter 5 (commencing
10 with Section 1001) or ~~upon the commission's determination~~
11 ~~whether the facility will facilitate achievement of the renewables~~
12 ~~portfolio standard established in Article 16 (commencing with~~
13 ~~Section 399.11).~~

14 (d) Any cost recovery pursuant to subdivision (b) or (c) shall
15 be limited to costs that are not approved for recovery in
16 transmission rates by the Federal Energy Regulatory Commission.

17 SEC. 2. Section 399.12 of the Public Utilities Code is amended
18 to read:

19 399.12. For purposes of this article, the following terms have
20 the following meanings:

21 (a) "Conduit hydroelectric facility" means a facility for the
22 generation of electricity that uses only the hydroelectric potential
23 of an existing pipe, ditch, flume, siphon, tunnel, canal, or other
24 manmade conduit that is operated to distribute water for a
25 beneficial use.

26 (b) "Delivered" and "delivery" have the same meaning as
27 provided in subdivision (a) of Section 25741 of the Public
28 Resources Code.

29 (c) "Eligible renewable energy resource" means an electrical
30 generating facility that meets the definition of an "in-state
31 renewable electricity generation facility" in Section 25741 of the
32 Public Resources Code, subject to the following limitations:

33 (1) (A) An existing small hydroelectric generation facility of
34 30 megawatts or less shall be eligible only if a retail seller or local
35 publicly owned electric utility owned or procured the electricity
36 from the facility as of December 31, 2005. A new hydroelectric
37 facility is not an eligible renewable energy resource if it will cause
38 an adverse impact on instream beneficial uses or cause a change
39 in the volume or timing of streamflow.

(B) Notwithstanding subparagraph (A), a conduit hydroelectric facility of 30 megawatts or less that commenced operation before January 1, 2006, is an eligible renewable energy resource. A conduit hydroelectric facility of 30 megawatts or less that commences operation after December 31, 2005, is an eligible renewable energy resource so long as it does not cause an adverse impact on instream beneficial uses or cause a change in the volume or timing of streamflow.

(2) A facility engaged in the combustion of municipal solid waste shall not be considered an eligible renewable *energy* resource unless it is located in Stanislaus County and was operational prior to September 26, 1996.

(d) “Procure” means to acquire through ownership or contract. For purposes of meeting the renewables portfolio standard procurement requirements, a retail seller or local publicly owned electric utility may procure either delivered electricity generated by an eligible renewable energy resource that it owns or for which it has entered into an electricity purchase agreement. Nothing in this article is intended to imply that the purchase of electricity from third parties in a wholesale transaction is the preferred method of fulfilling a retail seller’s obligation to comply with this article or the obligation of a local publicly owned electric utility to meet its renewables portfolio standard implemented pursuant to Section 387.

(e) (1) “Renewable energy credit” means a certificate of proof associated with the generation of electricity from an eligible renewable energy resource, issued through the accounting system established by the Energy Commission pursuant to Section 399.13, that one unit of electricity was generated and delivered by an eligible renewable energy resource.

(2) “Renewable energy credit” includes all renewable and environmental attributes associated with the production of electricity from the eligible renewable energy resource, except for an emissions reduction credit issued pursuant to Section 40709 of the Health and Safety Code and any credits or payments associated with the reduction of solid waste and treatment benefits created by the utilization of biomass or biogas fuels.

(3) No electricity generated by an eligible renewable energy resource attributable to the use of nonrenewable fuels, beyond a de minimis quantity used to generate electricity in the same process

1 through which the facility converts renewable fuel to electricity,
2 shall result in the creation of a renewable energy credit. The Energy
3 Commission shall set the de minimis quantity of nonrenewable
4 fuels for each renewable energy technology at a level of no more
5 than 2 percent of the total quantity of fuel used by the technology
6 to generate electricity. The Energy Commission may adjust the de
7 minimis quantity for an individual facility, up to a maximum of 5
8 percent, if it finds that ~~both~~ *all* of the following conditions are met:

9 (A) The facility demonstrates that the higher quantity of
10 nonrenewable fuel will lead to ~~a meaningful~~ *an* increase in
11 generation from the eligible renewable energy facility that is
12 *significantly* greater than generation from the nonrenewable fuel
13 alone.

14 (B) The facility demonstrates that the higher quantity of
15 nonrenewable fuels will reduce the variability of its electrical
16 output in a manner that results in net environmental benefits to the
17 state.

18 (f) “Renewables portfolio standard” means the specified
19 percentage of electricity generated by eligible renewable energy
20 resources that a retail seller is required to procure pursuant to this
21 article or the obligation of a local publicly owned electric utility
22 to meet its renewables portfolio standard implemented pursuant
23 to Section 387.

24 (g) “Retail seller” means an entity engaged in the retail sale of
25 electricity to end-use customers located within the state, including
26 any of the following:

27 (1) An electrical corporation, as defined in Section 218.

28 (2) A community choice aggregator. The commission shall
29 institute a rulemaking to determine the manner in which a
30 community choice aggregator will participate in the renewables
31 portfolio standard program subject to the same terms and conditions
32 applicable to an electrical corporation.

33 (3) An electric service provider, as defined in Section 218.3,
34 for all sales of electricity to customers beginning January 1, 2006.
35 The commission shall institute a rulemaking to determine the
36 manner in which electric service providers will participate in the
37 renewables portfolio standard program. The electric service
38 provider shall be subject to the same terms and conditions
39 applicable to an electrical corporation pursuant to this article.
40 Nothing in this paragraph shall impair a contract entered into

1 between an electric service provider and a retail customer prior to
2 the suspension of direct access by the commission pursuant to
3 Section 80110 of the Water Code.

4 (4) “Retail seller” does not include any of the following:

5 (A) A corporation or person employing cogeneration technology
6 or producing electricity consistent with subdivision (b) of Section
7 218.

8 (B) The Department of Water Resources acting in its capacity
9 pursuant to Division 27 (commencing with Section 80000) of the
10 Water Code.

11 (C) A local publicly owned electric utility.

12 *SEC. 3. The amendment of Section 399.2.5 of the Public*
13 *Utilities Code made by this act does not constitute a change in,*
14 *but is declaratory of, existing law and is intended by the Legislature*
15 *to clarify the language of that section to conform to the*
16 *construction and application of that section by the Public Utilities*
17 *Commission in Decision 07-03-012.*

18 *SEC. 4. This bill shall only become operative if this bill and*
19 *SB 722 are both enacted and become effective on or before January*
20 *1, 2011.*